SINGAPORE REPORTS

YEO TUAN PAUL v. PUBLIC PROSECUTOR

[A.Cr.J. (Wee Chong Jin C.J.) March 20, 1974]
[Singapore — Magistrate's Appeal No. 10 of 1974]

Enlistment Act (Cap. 229), s. 32(a) — Failure to report for enlistment — Plea of guilty — Revision.

National service — Failure to report for enlistment — Plea of guilty.

In this case the short facts were as follows:— In 1968 the appellant having finished his schooling applied to enlist for national service but was told that he was not of the age group and was rejected. Subsequently he joined the Singapore Telephone Board and he then was required to register and he duly registered for national service on April 21, 1971. He was medically examined on April 22, 1971 and eventually received the Enlistment Notice requiring him to report on the afternoon of January 23, 1973. After an unsuccessful attempt to obtain a postponement of his enlistment because of examinations he had to take, he presented himself at the Central Manpower Base. He found himself in a room with about 200 young men waiting to enlist. His name was called and he was questioned by a lady in military uniform. She asked him some questions, then returned his identity card and according to him she said, "Go back and wait". The appellant assuming that "Go back and wait" meant go home and wait for further notification, went home. It seemed however that he had to go into a room and wait until the oath taking ceremony. The appellant was charged with failing to comply with a notice of enlistment. He pleaded guilty and was convicted and sentenced. On appeal, counsel for the appellant requested the learned Chief Justice to exercise his powers of revision under section 258 of the Criminal Procedure Code.

Held: had the real facts been brought to light, namely that the appellant in fact on the day in question duly reported for enlistment, it was clear that no court would have convicted the appellant even on his plea of guilty on the charge as it stood and therefore in exercise of the powers of revision the conviction and sentence must be set aside.

MAGISTRATE'S APPEAL.

David Marshall for the appellant.

S. Rajendran (Deputy Public Prosecutor) for the respondent.

Wee Chong Jin C.J. (delivering oral judgment): I suppose this appeal has served one, I think, very useful purpose in that it shows the importance for both the prosecution as well as the accused person in a criminal charge to exercise extreme care and diligence in placing before the court the full facts which may be relevant both to the charge as well as to the sentence. In this particular case the accused, who had decided to plead guilty to the charge under section 32(a) of the Enlistment Act which is a charge for failing to report for enlistment, when the facts were outlined to the court in terms of the complaint that on the day as specified in the enlistment notice he had not turned up at the appropriate place to report for enlistment, admitted to that vital fact. Unfortunately, prosecuting counsel subsequently went on to stress to the court that the appellant had failed to report and then drew the attention of the court to the many problems that arose out of such failure and asked that this case be treated as a serious case. Had the real facts been brought to light, namely that he in fact on the day in question duly reported for enlistment, it is clear that no court would have convicted the appellant even on his guilty plea on the charge as it stood.

Ever since national service was introduced in Singapore and this has been many years ago, it has been made, I think, absolutely clear to everyone concerned that any evasion on the part of anyone who is liable to render national service, is a serious offence — clear because the Legislature has specified a heavy maximum punishment for it. The duty of the court is to administer the law having regard to what I have just said and to the facts of the particular case. The extent of the punishment must depend on the facts of the particular case.

Now, in this case the appellant has brought the present months of uncertainty on himself but on the facts as they are now before me, in exercise of my powers of revision I set aside the conviction and sentence.

Conviction and sentence set aside.

ANDREW CHOU HOCK GUAN & ORS. v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Winslow and Kulasekeram JJ.) March 29, 1974]
[Singapore — Criminal Appeal No. 14 of 1972]

Criminal Law and Procedure — Trial — Joint trial on charges of being members of unlawful assembly whose common object was to cause death — Evidence of accomplice — No corroboration — Trial judges accepting uncorroborated evidence — Discretion in ordering joint or separate trials — Admissibility of cautioned statements — Criminal Procedure Code (Cap. 113), ss. 121, 149 and Schedule E.

Penal Code ss. 149 and 302 — Members of unlawful assembly — Common object — Murder — Evidence Act (Cap. 5), s. 30.

In this case the nine appellants had been convicted at a joint trial of being members of an unlawful assembly whose common object was to cause death. At the trial before two judges the principal witness was one Augustine Ang who was an accomplice and had taken an active part from the outset. There was no corroboration of his evidence, but the trial judges accepted him as a truthful witness, and although they were of opinion that his evidence was uncorroborated, after warning themselves of the danger of acting on his uncorroborated evidence, they said they had no hesitation in acting on his uncorroborated evidence. On appeal it was argued *inter alia* (1) that the trial judge's assessment of the accomplice was wholly unwarranted and wholly unsupported by the evidence given at the trial; (2) the trial judges ought not to have convicted the appellants on the uncorroborated and wholly unsatisfactory evidence of the accomplice; (3) the trial judges erred in law in refusing the applications of some of the appellants that they be tried separately from the other co-accused; (4) the trial judges erred in law and in fact in finding that the common object of the appellants was to kill the three victims; (5) the trial judges should not have admitted the cautioned statements of the 3rd and 4th appellants.

Held: (1) the court had throughout the years always recognised the advantages which a jury or a judge sitting alone, has in seeing and hearing the witnesses, and in the present case the court had not been persuaded that the trial judges were wrong or were not justified, on all the evidence before them during the trial in their assessment of Augustine Ang as a truthful witness;

(2) the judgment of the trial judges clearly indicated that they were aware of the danger of convicting without corroborative evidence of Augustine Ang's story and that they knew that there was no such evidence but nevertheless were convinced that he was speaking the truth and that his story was true when considered in the light of the rest of the evidence and the surrounding circumstances;